

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JON S. HOLT,

Defendant.

OPINION AND ORDER

09-cv-708-bbc

05-cr-49-bbc

In an order entered on December 8, 2009, I denied defendant Jon Holt's motion for post conviction relief under 28 U.S.C. § 2255, seeking a reduction in the sentence imposed on him on October 25, 2005. In doing so, I neglected to address the issuance of a certificate of appealability under the newly effective amendments to Rule 11 of the Rules Governing Section 2255 Cases in the United States District Courts.

A certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make this showing, a defendant must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that

the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4 (1983)).

Although Rule 11 allows the court to direct the parties to submit arguments on the question of issuing a certificate of appealability, it is unnecessary to do so in this instance. No reasonable jurist would believe that defendant's motion has any merit. Defendant's argument was that under recent Supreme Court decisions in Begay v. United States, 128 S. Ct. 1581 (2008), and Chambers v. United States, 129 S. Ct. 687 (2009), his sentence required modification. However, he was unable to show that the Supreme Court had addressed the nature of his particular conviction or that, even if it had, the decision would apply to a case that became final well before the Court ruled.

ORDER

No certificate of appealability will issue in this case.

Entered this 15th day of December, 2009.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge